

Chapter DHS 192

CITIES, COUNTIES AND VILLAGES DESIGNATED AS AGENTS OF THE DEPARTMENT FOR PUBLIC HEALTH PROTECTION PURPOSES

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Note: Chapter HSS 192 was renumbered to Chapter HFS 192 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, August, 1998, No. 512. Chapter HFS 192 was renumbered chapter DHS 192 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 192.01 Authority and purpose. This chapter is promulgated under the authority of ss. 254.69 (2) (b) and 250.04 (7), Stats., to provide standards for villages, cities and counties designated by the department to be its agents in issuing permits to and making investigations and inspections of hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments, campgrounds, including camping resorts, recreational and educational camps, mobile home parks and public swimming pools, and in making investigations and inspections of food vending machines, their operators and vending machine commissaries.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

DHS 192.02 Applicability. This chapter applies to a village, city or county designated as an agent of the department or organization for agent status.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88.

DHS 192.03 Definitions. In this chapter:

(1) "Agent" means a village, city or county which has organized or appointed a county, city and county or multiple county health department under s. 251.02, Stats., a health commission or committee under s. 141.01, 1991 Stats., a city board of health or health officer under s. 141.015, 141.02 or 141.04, 1991 Stats., or a community human services board under s. 46.23, Stats., has a population greater than 5,000, and has entered into an agent agreement with the department.

(2) "Agent agreement" means a written agreement authorized by s. 254.69, Stats., between the department and a village, city or county, whereby the village, city or county is authorized to enforce, on behalf of the department, s. 254.47, Stats., and subch. VII of ch. 254, Stats., and related administrative rules.

(3) "Department" means the Wisconsin department of health services.

(4) "Facility" means a hotel or motel, tourist rooming house, restaurant, bed and breakfast establishment, food vending machine or vending machine commissary under subch. VII of ch. 254, Stats., or a camping resort or other campground, recreational camp, educational camp, mobile home park or public swimming pool under s. 254.47, Stats.

(5) "Fiscal year" means the state fiscal year, July 1 through the following June 30.

(6) "New agent" means a village, city or county that has applied for and has been granted agent status for the first time, or a village, city or county that has reapplied for and has been granted agent status after termination of the original agent agreement.

(7) "Registered sanitarian" means a sanitarian registered under s. 440.98, Stats., and chs. SPS 174 to 177.

(8) "Related administrative rules" means department rules that implement s. 254.47, Stats., or subch. VII of ch. 254, Stats., namely, chs. DHS 172, 175, 178, 195, 196, 197 and 198, or equivalent or more stringent local requirements.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; correction in (7) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; corrections in (3), (7) and (8) made under s. 13.92 (4) (b) 6. and 7., Stats., Register January 2009 No. 637; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663; **correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.**

DHS 192.04 Agent status. (1) AGENT PLAN FOR ADMINISTRATION AND ENFORCEMENT. A village, city or county wishing to become a new agent shall enter into an agent agreement with the department by submitting a written proposal to the department which shall include a plan for the administration and enforcement of s. 254.47, Stats., and subch. VII of ch. 254, Stats., and related administrative rules. The plan shall include, at minimum:

(a) Identification of the agency or agencies of village, city or county government that will issue permits and conduct investigations and inspections;

(b) A description of the projected staffing and budget for issuing permits, making investigations and inspections, providing technical assistance, and enforcing applicable state rules and local ordinances;

(c) A list of the fees to be charged by the village, city or county for facilities issued permits under the agent agreement;

(d) A description of the proposed permit issuance and record-keeping system to be maintained by the village, city or county under the agent agreement;

(e) A declaration that the village, city or county granted agent status will contract with the department, as permitted by s. 254.69 (2) (dm), Stats., if the village, city or county wants the department to collect fees and issue permits;

(f) A description of the proposed inspection and enforcement program to be implemented by the village, city or county, with a copy of the applicable city or county ordinance;

(g) A plan of action to ensure that there will be cooperation with appropriate federal, state and local agencies in the event of a natural disaster or other emergency;

(h) Procedures for the investigation and follow-up of citizen complaints about facilities that were issued permits under the agent agreement;

(i) Procedures for the investigation and follow-up of reports of suspected foodborne illness;

(j) The time period within which the village, city or county will make a determination on an application for a permit. The time period may not exceed 30 days following receipt of a complete application;

(k) An assurance of continued support by the village, city or county for carrying out the agent agreement; and

(L) Any other information which the department considers necessary or relevant for its review of a village, city or county plan.

(2) DEPARTMENT REVIEW OF AGENT PLAN. The department shall review the agent's plan under sub. (1) for completeness and for the adequacy and appropriateness of the proposed program, fee schedules and procedures for proper administration and enforcement of s. 254.47, Stats., and subch. VII of ch. 254, Stats., and related administrative rules.

(3) AGENT AGREEMENT. If the department approves the agent's plan, the department shall prepare an agent agreement. The agent agreement shall be signed by both parties. By signing the agent agreement, the village, city or county agrees to comply with this chapter. In return, the department authorizes the village, city or county to enforce, on behalf of the department, s. 254.47, Stats., and subch. VII of ch. 254, Stats., and related administrative rules.

(4) IMPLEMENTATION OF AGREEMENT. (a) *Dependent on local ordinance.* The implementation of the agent agreement shall be contingent on the village, city or county adopting an ordinance that incorporates the department's rules by reference or an ordinance that consists of requirements which are at least as stringent as those in the department's rules and do not conflict with those rules. Nothing in this chapter shall prevent a village, city or county from adopting more stringent requirements.

(b) *Agent authority and responsibility.* Upon both parties signing the agent agreement, the agent shall have the authority and responsibility to enforce provisions of s. 254.47, Stats., and subch. VII of ch. 254, Stats., and related administrative rules.

(c) *Department discontinuation of activities.* 1. Upon execution of an agent agreement, the department shall discontinue all permit issuance and enforcement activities under s. 254.47, Stats., and subch. VII of ch. 254, Stats., in the area of the agent's jurisdiction for the period of the agreement, except as provided in s. DHS 192.07 (4) and s. 254.69 (2) (h), Stats.

(d) *Duration and amendment.* An agent agreement shall continue in effect until terminated by the agent or terminated, suspended or revoked by the department pursuant to s. DHS 192.11. An agent agreement may be amended by the written agreement of both parties.

(e) *Permit issuance and inspection.* The agent shall issue permits to facilities and make investigations and inspections of facilities as specified in the agent agreement.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

DHS 192.05 Staffing. (1) **HIRING CRITERIA.** The agent's inspection staff shall meet hiring criteria set forth in local ordinances and personnel policies and the educational or experience requirements established for sanitarian registration under chs. SPS 174 to 177.

(2) **REGISTERED SANITARIAN.** Inspections shall be made by a sanitarian registered under chs. SPS 174 to 177 or by a person supervised by a Wisconsin registered sanitarian. The person making inspections shall be working to obtain registration under chs. SPS 174 to 177 if he or she is not already a registered sanitarian.

(3) **PERSONNEL CHANGES.** Within 10 days after the date on which it takes place, the agent shall report to the department in writing any change in the assignment of a supervisor of the inspection staff who are not currently Wisconsin registered sanitarians and any change in the organization of the inspection staff including authority line changes. For those agents employing only one or 2 sanitarians, the agent shall also report any change in assignment of inspection staff who are providing services under the agent agreement.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections in (1) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; corrections in (1) and (2) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637;

correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663; correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671.

DHS 192.06 Inspections. (1) **MINIMUM NUMBER OF INSPECTIONS.** The agent shall conduct one or more inspections of each facility within the jurisdiction of the agent each fiscal year to determine the facility's compliance with s. 254.47, Stats., and subch. VII of ch. 254, Stats., and related administrative rules.

(2) **INSPECTION BEFORE ISSUANCE OF PERMIT.** Before issuing a permit to a new facility or to a facility that has changed operators, the agent shall inspect the facility. Every inspection before issuance of a permit shall be conducted before the operator opens for business. The agent may not knowingly allow a facility to operate unless the facility has been properly issued a permit.

(3) **INSPECTION PRIORITIES.** The agent shall give inspections that are made prior to issuance of permits and emergency complaint inspections priority over routine inspections.

(4) **INSPECTIONS BY THE DEPARTMENT.** The department may conduct an inspection of a facility in an agent's jurisdiction in response to an emergency, for the purpose of monitoring and evaluating the agent's permit issuance, inspection and enforcement program, or at the request of the agent. The department shall make a reasonable effort to notify the agent before an inspection is conducted.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

DHS 192.07 Enforcement. (1) **ACTION FOR ENFORCEMENT.** The agent shall take necessary and reasonable action to enforce s. 254.47, Stats., and subch. VII of ch. 254, Stats., and related administrative rules for the types of facilities for which the agent has been delegated agent status, and shall incur the costs of these actions. The department shall provide technical assistance in enforcement to agents on request.

(2) **ENFORCEMENT ACTIVITIES.** The agent shall use state statutes, administrative rules and any applicable local ordinances in its enforcement activities. Enforcement actions may include revocation, suspension, fines, orders to close, temporary or final hold orders on equipment, food, processes or facilities and conditional permits.

(3) **ENFORCEMENT NOTIFICATION.** The agent shall notify the department in writing within 10 days after taking any enforcement action involving permit suspension or revocation or court action. The department shall assist agents in enforcement activities upon request.

(4) **DEPARTMENT ENFORCEMENT ACTION.** In the event that the agent has been notified by the department of any deficiency on the part of a facility under its jurisdiction in complying with this chapter and has had reasonable opportunity to take enforcement action, but has either neglected to act expeditiously in taking appropriate enforcement action or has determined not to take enforcement action, the department may act under s. 254.85, Stats., to enforce this chapter.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (1) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546.

DHS 192.08 Reports and records. (1) **RETENTION OF RECORDS AND NOTIFICATION.** The agent shall retain copies of all reports of investigations and inspections and all orders for at least 3 years after completion and longer if required by applicable statutes or local ordinances. Inspection report forms approved by the department shall be used for all pre-licensing, routine and follow-up inspections. When a permit is issued for a new facility or for a facility that has changed operators, the department shall be notified as indicated in the agent agreement.

(2) **REPORTS TO THE DEPARTMENT.** The agent shall submit reports as requested by the department. The department may review or request a copy of any inspection report, correspondence or order on any facility in the area of the agent's jurisdiction, and

any other report the department determines that it needs to monitor agent performance or keep informed about program activities and the regulated facilities.

(3) RECORD MAINTENANCE. The agent shall maintain current records of facilities that have been issued permits. These records shall be maintained as required by the department in the agent agreement.

(4) IDENTIFICATION. The department shall provide the agent with an identification number for each new facility.

(5) INITIAL INSPECTION REPORTS. By the 10th of each month after the month in which the agent issues a permit or receives notification from a facility of a change affecting the permit, the agent shall provide to the department a copy of the report of the inspection made before issuance of the permit, or a copy of the agent change form, DOH 7219, or of the notification of change, in order for the department to maintain current records of facilities that are issued permits in the area of the agent's jurisdiction. Temporary restaurants as defined in s. DHS 196.03 (7) are included in this reporting requirement.

(6) LIST OF OPERATORS. By September 1 of each year, the agent shall provide the department with a complete list of the names and addresses of operators of facilities that were issued permits by the agent during the previous fiscal year.

(7) AGENT COSTS. The agent shall keep and shall provide to the department on request records showing the cost of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to facilities, and the cost of enforcing applicable state statutes and rules and local ordinances. The program fees collected by an agent may not exceed the reasonable costs incurred by the agent. A summary report on all costs for providing services required under the agent agreement and on all program fees collected by the agent shall be sent to the department upon request.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; correction in (5) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 192.09 Reimbursements and other payments for services. **(1) REIMBURSEMENT OF AGENTS FOR VENDING INSPECTIONS.** (a) By September 30 of each year, the department shall reimburse agents for inspecting vending machine commissaries and vending machines during the previous fiscal year, as required under ss. 254.65 (2) and 254.69 (1), Stats. The department shall provide agents with information on how to request reimbursement.

(b) Fee reimbursements for the inspection of vending machines that have been moved from one agent's jurisdiction to another shall be credited to the agent making the first inspection during the fiscal year.

(2) REIMBURSEMENT OF THE DEPARTMENT FOR STATE FEES COLLECTED. By September 30 of each year, each agent shall reimburse the department for state fees collected by the agent during the previous fiscal year, as required under s. 254.69 (2) (e), Stats., and shall provide a complete roster of all permits issued by the agent during the preceding fiscal year and a reimbursement summary showing all amounts reimbursed by facility type. The department shall use this information to confirm the amount of reimbursement due the department.

(3) PAYMENT TO THE DEPARTMENT FOR COLLECTING FEES AND ISSUING PERMITS. If an agent has contracted with the department under s. 254.69 (2) (dm), Stats., and s. DHS 192.04 (1) (e) for the department to collect fees and issue permits, the agent shall pay the department for the actual and reasonable cost of providing these services.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

DHS 192.10 Expiration of permits. All permits issued by the agent under s. 254.47, Stats., and subch. VII of ch. 254, Stats., shall expire annually on June 30th.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

DHS 192.11 Termination, revocation or suspension of agent agreement. **(1) TERMINATION.** An agent may terminate the agent agreement upon 90 days written notice to the department. The notice shall specify the reasons for termination and the last day that the [village,] city or county will have agent status.

Note: The revisor added the bracketed word "village," which was unintentionally omitted in the agency's order promulgating this rule. See the definitions of "agent" and "agent agreement" in s. DHS 192.03 (1) and (2).

(2) REVOCATION. If the department finds that the agent has failed to comply with this chapter or with the terms and conditions of the agent agreement, the department may revoke agent status as provided in s. 254.69 (2) (b), Stats., upon 90 days written notice to the agent. The notice shall specify the reasons for revocation and the last day that the village, city or county will have agent status.

(3) SUSPENSION. If the department finds that suspension of the agent agreement is necessary to protect the public's health or safety, the department may immediately suspend the agent agreement upon notice to the agent. The department shall hold a hearing if requested by the agent. If a hearing is requested, the hearing will be held within 15 days after the department receives the request. The suspension shall remain in effect until the final hearing decision is issued. In lieu of a suspension, the department may notify the agent of any deficiencies in the agent's inspection and permit issuance program and establish a deadline for correction of the deficiencies.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476.

DHS 192.12 Evaluation and training. **(1) ANNUAL EVALUATION.** The department shall annually evaluate the performance of each agent. A uniform method shall be employed to evaluate agents and state staff. The evaluation shall include:

(a) A survey of a random sample of facilities licensed by the agent under the agent agreement;

(b) A review of records dealing with inspections, enforcement actions, consumer complaints and epidemiological investigations; and

(c) A review of licensing, recordkeeping and reporting procedures followed by the agent under the agent agreement.

(2) ADDITIONAL EVALUATIONS. In addition to the annual evaluation under sub. (1), the department may at any time perform any additional evaluations of an agent's performance.

(3) TECHNICAL ASSISTANCE AND TRAINING. (a) Upon request of an agent, the department shall provide technical assistance to the agent's staff and shall train the agent's staff.

(b) The agent shall cooperate with the department in conducting training programs for operators and employees of facilities located in the area of the agent's jurisdiction.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88.

DHS 192.13 Waivers. The department may, in its discretion, waive a requirement of this chapter if the department determines that the waiver will not adversely affect the health, safety or welfare of the public and that strict enforcement of the requirement would result in unreasonable hardship for the agent. The department may condition the grant of a waiver upon the performance by the agent of alternative measures.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88.